## REMARKS

This response is intended as a full and complete response to the non-final Office Action mailed December 16, 2004. In the Office Action, the Examiner notes that Claims 1-20 are pending, of which Claims 1-20 are rejected. By this response, Applicants have amended Claim 1 and added new Claim 21. The amendments and the newly added claim are fully supported by the Specification. For example, the amendments to Claim 1 are supported at least by page 7, line 14, through page 9, line 11. New claim 21 is supported at least by page 10, line 21 through page 11, line 19, and page 12, line 17 through page 13, line 22 of the Specification. Thus, no new matter has been introduced, and the Examiner is respectfully requested to enter the amendments and the new claim.

The Applicants, by amending the claims, are not acquiescing to the Examiner's characterizations of the art of record or to the Applicants' subject matter recited in the pending claims. Further, the Applicants are not acquiescing to the Examiner's statements as to the applicability of the art of record to the pending claims by filing the instant response including amendments.

### 35 U.S.C. §103(a) Rejection of Claims 1-8 and 17-20

The Examiner has rejected claims 1-8 and 17-20 under 35 U.S.C. §103(a) as being unpatentable over "Personalized EPG using User Preference Metadata" by Akkaya et al. (hereinafter "Akkaya") in view of "TV gets Personal" by Oliphant et al. (hereinafter "Oliphant"). The Applicants respectfully traverse the rejection.

Applicants' independent claim 1 recites:

> "1. A data structure stored on computer readable media, the data structure comprising:
> one or more data tags, each data tag used to provide information regarding a broadcast advertisement;
> one or more electronic program guide action tags, each electronic program guide action tag used to define a valid electronic program guide feature that may be accessed from within the broadcast advertisement, the electronic program guide feature being related to the broadcast advertisement, a program associated with the broadcast advertisement, or both;

the data structure operative to provide a link between the broadcast advertisement and an electronic program guide to provide access to electronic program guide features defined by the electronic program guide action tags from within the broadcast advertisement."

The test under 35 U.S.C. §103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious; rather the test is whether the claimed invention, considered as a whole, would have been obvious. Jones v. Hardy, 110 USPQ 1021, 1024 (Fed. Cir. 1984) (emphasis added). Moreover, the invention as a whole is not restricted to the specific subject matter claimed, but also embraces its properties and the problem it solves. In re Wright, 6 USPQ 2d 1959, 1961 (Fed. Cir. 1988) (emphasis added). The Akkaya and Oliphant references, alone or in combination, fail to teach or suggest the Applicant's invention as a whole.

Specifically, neither of the references teaches or suggests at least the claimed "electronic program guide action tag used to define a valid electronic program guide feature that may be accessed from within the broadcast advertisement, the electronic program guide feature being related to the broadcast advertisement, a program associated with the broadcast advertisement, or both," and "a link between the broadcast advertisement and an electronic program guide to provide access to electronic program guide features defined by the electronic program guide action tags from within the broadcast advertisement."

Akkaya discloses user preference metadata used by a personalized electronic program guide, the user preference metadata created by the user by entering his/her preferences. The user preference metadata is stored on a personal data recorder, and is used to filter incoming content, which has its own metadata. However, the user preference metadata of Akkaya does not define an electronic program guide feature, and is not related to any particular advertisement or program, but is instead related to a general set of preferences. Furthermore, Akkaya does not teach or suggest a data structure which is operative to provide a link between the advertisement and an electronic program guide. The user preference metada of Akkaya does not link to anything. Furthermore, Akkaya also does not teach or suggest that the link provides access to electronic program guide features defined by the electronic program guide action tags from within the advertisement.

Oliphant fails to bridge the substantial gap between Akkaya and the Applicants' invention as recited in claim 1. Oliphant discloses metadata downloaded as part of an electronic program guide used by a personal video recorder. However, Oliphant only discloses metadata that describes programs (page 10, first full paragraph). Oliphant does not teach or suggest a data structure comprising an electronic program guide action tag used to define a valid electronic program guide feature, let alone an electronic program guide feature that is related to a broadcast advertisement or a program. Furthermore, Oliphant only discloses providing a link to the advertised program from the metadata (page 12, column 1, last full paragraph). This is different than providing a link to electronic program guide features using the electronic program action tags contained in the data structure.

Thus, Akkaya and Oliphant, either singly or in any operable combination, fail to teach or suggest Applicants' claimed invention as a whole. Therefore, Claim 1 is patentable over Akkaya and Oliphant under 35 U.S.C. §103. Moreover, Claims 2-8 and 17-20 depend, either directly or indirectly, from independent Claim 1 and recite additional limitations thereof. As such and at least for the same reasons as discussed above, these dependent claims are also patentable over Akkaya and Oliphant under 35 U.S.C. §103.

**35 U.S.C. §103(a) Rejection of Claims 9-16**

The Examiner has rejected claims 9-12 under 35 U.S.C. §103(a) as being unpatentable over Akkaya in view of Oliphant, and further in view of US Patent No. 6,678,733 to Brown et al. (hereinafter "Brown"). The Applicants respectfully traverse the rejection.

Applicants' independent claim 1 recites:

> "1. A data structure stored on computer readable media, the data structure comprising:
> one or more data tags, each data tag used to provide information regarding a broadcast advertisement;
> one or more electronic program guide action tags, each electronic program guide action tag used to define a valid electronic program guide feature that may be accessed from within the broadcast advertisement, the electronic program guide feature being related to the broadcast advertisement, a program associated with the broadcast advertisement, or

both;

the data structure operative to provide a link between the broadcast advertisement and an electronic program guide to provide access to electronic program guide features defined by the electronic program guide action tags from within the broadcast advertisement."

The test under 35 U.S.C. §103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious; rather the test is whether the claimed invention, considered as a whole, would have been obvious. Jones v. Hardy, 110 USPQ 1021, 1024 (Fed. Cir. 1984) (emphasis added). Moreover, the invention as a whole is not restricted to the specific subject matter claimed, but also embraces its properties and the problem it solves. In re Wright, 6 USPQ 2d 1959, 1961 (Fed. Cir. 1988) (emphasis added). The Akkaya and Oliphant references, alone or in combination, fail to teach or suggest the Applicant's invention as a whole.

As discussed above, claim 1 is patentable over the Akkaya and Oliphant because these references, either alone or in combination, fail to teach or suggest at least the claimed "electronic program guide action tag used to define a valid electronic program guide feature that may be accessed from within the broadcast advertisement, the electronic program guide feature being related to the broadcast advertisement, a program associated with the broadcast advertisement, or both," and "a link between the broadcast advertisement and an electronic program guide to provide access to electronic program guide features defined by the electronic program guide action tags from within the broadcast advertisement."

Brown fails to bridge the substantial gap between the Akkaya and Oliphant references and the Applicants' invention as recited in claim 1. Brown discloses a client, which may be a set top box, which executes a shell program containing a set of APIs, which may access an electronic program guide stored by the client. However, Brown does not teach, inter alia, an electronic program guide feature that may be accessed from within the advertisement, or an electronic program guide feature that may be accessed from within the advertisement and which is related to the advertisement or a program associated with the advertisement.

Thus, Akkaya, Oliphant and Brown, either singly or in any operable combination, fail to teach or suggest Applicants' claimed invention as a whole. Therefore, Claim 1 is patentable over Akkaya and Oliphant under 35 U.S.C. §103. Moreover, Claims 9-16

depend, either directly or indirectly, from independent Claim 1 and recite additional limitations thereof. As such and at least for the same reasons as discussed above, these dependent claims are also patentable over Akkaya, Oliphant and Brown under 35 U.S.C. §103.

**New Claim 21**

New Claim 21 is patentable over the cited references because it contains relevant limitations similar to those discussed above in regards to Claim 1. Thus, it is believed that new Claim 21 is also patentable over the cited references for the reasons discussed above in regards to Claim 1.

## CONCLUSION

Thus, the Applicants submit that none of the claims presently in the application are anticipated or obvious under the respective provisions of 35 U.S.C. §102 and §103. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

Dated: 3/4/05

E. J. Wall

Eamon J. Wall
Registration No. 39,414
Attorney for Applicants

MOSER, PATTERSON & SHERIDAN, LLP
595 Shrewsbury Avenue, Suite 100
Shrewsbury, New Jersey 07702
Telephone: 732-530-9404
Facsimile: 732-530-9808